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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,296	07/09/2003	William C. Eungard	87353.2961	7071
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BAKER & HOSTETLER LLP Washington Square Suite 1100 1050 Connecticut Avenue, N.W. Washington, DC 20036		EXAMINER A, PHI DIEU TRAN		
		ART UNIT 3633		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/615,296

Applicant(s)

EUNGARD, WILLIAM C.

Examiner

Phi D. A

Art Unit

3633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-22, 24-34, 36-44, 47 and 49-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-22, 24-34, 36-44, 47 and 49-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

1. PRODUCT BY PROCESS CLAIM:

“ The subject matter present is regarded as a product by process claim in which a product is introduced by the method in which it is made. It is the general practice of this office to examine the final product described regardless of the method provided by the applicant.”

The limitation of “blow mold” is treated accordingly to the office policy set forth above.

Also, applicant is requested to clarify about the status of claim 56 which appears to be missing from applicant’s claim set, and not mentioned in the Remarks.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-8, 10-11, 13-22, 24-34, 42-43, 49, 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Brockman et al (5185977).

Brockman et al shows a panel assembly mountable along an opening in a dock wall, the dock wall having a front face (the face which part 222 attaches to) around the sides of the opening, an inside face (the face to the right of part 220 figure 3), facing into the opening, the front face and inside face meeting at a corner, comprising a first panel (220’), a second panel (240, 224’, 222’), the second panel is adapted for essentially pivotal movement relative to the first panel about a first axis, the first panel is adapted for essentially pivotal movement relative to front face of the dock wall about a second axis(at 230), the first panel is mountable to the front

face of the dock wall (the panel 220' is shown attached to the front face per anchoring bolt 226 and part 222) so that the second axis is adjacent the front face and spaced laterally outside of the corner (the axis at 230 is adjacent to and spaced from and laterally outside of the corner as the axis is to the left of the corner), the first panel having a front edge, a rear edge, the second panel having a front edge and rear edge, the rear edge of the second panel being pivotally connected to the front edge of the first panel, the rear edge of the second panel is hingedly connected to the front edge of the first panel, the rear edge of the second panel is castellated and the front edge of the first panel being also castellated such that the rear edge of the second panel and the front edge of the first panel interlock to form a hinge joint (figure 2), a stay (the part joining the panels together), the panel assembly having a length and the stay is positioned in an opening extending the length of the panel assembly through the castellated front edge of the first panel and the castellated rear edge of the second panel, the stay biases the panel assembly to an open position (inherently so as the figures 3-4 show the assembly being in open positions), the panel assembly having an interior face on the side of the dock opening and an opposing exterior face, the panel assembly further comprising at least one backing member(160) positioned at the first axis on the interior face of the panel assembly, the backing member (160) biases the panel to an open position where the second panel is held away from the first panel, the backing member is springs, the first panel having recessed portion at or near the front edge of the first panel, the second panel having a recessed portion at or near the rear edge of the panel, the backing member is adapted to fit between the recessed portions, the first panel and the second comprising a rigid but flexible material, at least one of the first or second panels comprise a plurality of panel portions which assembled to form the first or second panels, the rear edge of first panel is indirectly

mountable to the dock wall, the panel assembly further comprising at least one L-shaped bracket for flexibly mounting the rear edge of the first panel to the dock wall, a seal member (250) located at the front edge of the second panel, the seal is integral with the second panel, the seal member comprising a hook portion located at the front edge of the second panel, the hook portion comprising a sealing strip, the first panel having a length and the second panel having a length and the length of the first panel and length of the first panel and the length of the second panel being sized for vertical mounting along the opening in the dock wall, the first panel having a length and the second panel having a length of the first panel and the length of the second panel being sized for horizontal mounting along the width of the opening in the dock wall, the dock further comprising at least a second panel assembly, the first panel assembly is directly mountable along a side of the opening in the dock wall which is approximately perpendicular to the dock floor (the assembly including part 220), the second panel assembly is indirectly or directly mountable along a second side of the opening in the dock wall which is also approximately perpendicular to the dock floor, the dock having a dock floor, the dock shelter further comprising a top portion panel assembly (110), the top portion panel assembly is directly mountable to a side of the opening in the dock wall which is parallel to the dock floor and the top portion panel assembly is positioned along the dock wall above and substantially perpendicularly to the first and second assemblies, at least one of the first, second or top panel assemblies each further comprising a sealing member, the assembly being expandable, the first panel assembly comprising a rear first panel (220') having a front edge and a rear edge, a front first panel (224', 222', 240) having a front edge and a rear edge, a first seal portion (252), the rear edge of the front first panel is pivotally connected to the front edge of the rear first panel defining a first

axis of rotation, the rear edge of the rear first panel is adapted for essentially pivotal movement relative to the dock all about a second axis of rotation and is directly or indirectly mountable to a first vertical side of the dock wall opening, the first seal portion is located at the front edge of the front first panel, a second panel assembly comprising a rear second panel having a front edge and a rear edge, a front second panel having a front edge and a rear edge, a second seal portion (the second assembly being identical assembly on the other side of the opening of the dock), the rear edge of the front second panel is pivotally connected to the front edge of the rear second panel defining a third axis of rotation, the rear edge of the rear second panel is adapted for essentially pivotal movement relative to the dock wall about a fourth axis of rotation and is mountable to a second, opposing vertical side of the dock wall opening, the second seal portion is located at the front edge of the front second panel, the first, second, third , and fourth axes of rotation are substantially parallel to one another, the first panel is mountable to the front face of the dock wall so that the second axis is adjacent the front face and spaced laterally outside of the corner, the assembly is expandable (inherently able to be adapted to accommodate the different truck widths as set forth), the first expandable panel assembly directly mountable to the dock wall and configured to sealingly engage trucks of varying widths (part 222, 220 being part of the assembly), the first panel assembly comprising a rear panel means, a rear panel means (first and second panels), the front panel means being operably coupled to the rear panel means by a hinge means, the seal member comprising a serrated portion (shown by part 246 and its adjacent surface), a top sealing member means located at an edge of the top front panel means, the top front panel means being operably coupled to the top rear panel means such that the top front panel means deflects toward the dock wall opening, a seal member located at the front edge of

the second panel, the seal being a separate component attached to the second panel, the front face and the inside face meeting at a corner, the first panel is mountable to the front face of the dock wall so that the second axis is adjacent the front face and spaced laterally outside of the corner.

3. Claims 50-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller et al (6948285).

Miller et al shows a panel assembly mountable along an opening in a dock wall (figure 2) comprising a first panel (28) second panel (52), the second panel is adapted for essentially pivotable movement relative to the first panel about a first access, the first panel is adapted for essentially pivotable movement relative to the front face of the dock wall about a second axis, the first and second panel being hingely joined by a hinge (50) comprising a backing member (58), the backing member seals the panel at the hinge region, the backing member spends substantially all the height of the panel assembly a the hinge region, a seal member (64) located at the front edge of the second panel.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al (5185977).

Brockman et al shows all the claimed limitations. The claimed method steps of providing shelter about the end of a vehicle body parked at a dock opening would have been the obvious method steps of providing Brockman et al's shelter for vehicle's ends.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al (5185977).

Brockman et al shows all the claimed limitations except for the material being blow molded.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Brockman et al's structure to show being blow molded because blow molding, extrusion, cold rolled, hot roll etc...are well known process for forming panels.

7. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al (5185977) in view of O'Neal (4070801) as applied to claim 34 above and further in view of Alten (5174075)

Brockman et al shows all the claimed limitations except for a first corner panel adapted to overlap the top portion panel assembly and the first expandable panel assembly when mounted, a second corner seal adapted to overlap the top portion panel assembly and the second expandable panel assembly when mounted.

Alten shows a first corner panel(8, 7, right) adapted to overlap the top portion panel assembly and the first expandable panel assembly when mounted, a second corner seal (8, 7, left) adapted to overlap the top portion panel assembly and the second expandable panel assembly when mounted.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Brockman et al's modified structure to show a first corner panel adapted to overlap the top portion panel assembly and the first expandable panel assembly when mounted, a second corner seal adapted to overlap the top portion panel assembly and the second expandable panel assembly when mounted because the corner panel seals would provide protection against any gaps between the top seal and the side seals as taught by Alten.

8. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al (5185977) in view of O'Neal (4070801).

Brockman et al as modified by O'Neal shows all the claimed limitations. The claimed method steps of providing shelter about the end of a vehicle body parked at a dock opening would have been the obvious method steps of providing shelter with Brockman et al's modified structure for vehicle's ends.

9. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al (5341613) in view of O'Neal (4070801).

Brockman et al as modified by O'Neal shows all the claimed limitations except for the spring being a mounting angle thermo-formed into the first panel.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Brockman et al's modified structure to show the spring being a mounting angle thermo-formed into the first panel because having the spring being a mounting angle thermo-formed, spring steel allow for the spring member to be flexible and yet able to retain its shape.

Brockman et al as modified by O'Neal shows all the claimed limitations. The claimed method steps of providing shelter about the end of a vehicle body parked at a dock opening would have been the obvious method steps of providing shelter with Brockman et al's modified structure for vehicle's ends.

10. Claims 37-40, 41, 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman et al (5341613) in view of O'Neal (4070801).

Brockman et al shows a shelter about the end of a vehicle body parked at a dock opening and an inside face facing into the opening (figures 1-2), with the front face and the inside face meeting at a corner, a first panel assembly attached to a first vertical side of the dock opening, the first panel assembly comprising a first front panel assembly (210), a first rear panel (224), the first front panel being adapted to essentially pivotally movement relative to the first rear panel around a first axis, the first panel assembly comprising flexibly mounting the first rear panel to the dock wall, a second panel assembly installed to a second vertical side of the dock opening, the second panel assembly comprising a second front panel and a second rear panel, the second front panel being adapted for essentially pivot movement relative to the second rear panel about a second axis, the second panel assembly comprising flexibly mounting the second rear panel to the front face of the dock wall, the first panel is mountable to the front face of the dock wall (150) so that the second axis is adjacent the front face and space laterally outside of the corner, the first panel assembly indirectly mounted to the dock wall, the first axis of rotation and the second axis of rotation being substantially perpendicular to the dock floor and substantially parallel to one another, a top portion assembly (110) along a top horizontal side of the dock wall opening, the

first panel is flexibly mounted to the dock wall using an L-shaped spring (the part connecting part 224' to part 222).

Brockman et al shows all the claimed limitations except for the top portion assembly comprising a top front panel and a top rear panel.

O'Neal shows for the top portion panel assembly having a top rear panel means (13), a top front panel means(16), the top rear panel means is mountable along horizontal side of the dock wall openings.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Brockman et al's structure to show the top portion assembly comprising a top front panel and a top rear panel. because it would allow for the easy sealing of a vehicle top as taught by O'Neal.

Brockman et al as modified by O'Neal shows all the claimed limitations. The claimed method steps of providing shelter about the end of a vehicle body parked at a dock opening would have been the obvious method steps of providing shelter with Brockman et al's modified structure for vehicle's ends.

Response to Arguments

1. Applicant's arguments filed 10/4/07 have been fully considered but they are not persuasive.
2. With respect to Brockman ('977) and 102 rejection, examiner would like to set forth the followings. With respect to claims 1-8, 10-11, 13-19, 42-43 and 56, examiner respectfully states that the reference shows at least a first panel (220') being pivotally attached to a mounting

structure 150 via a bracket 220, 222 at 230. The first panel 220' per its pivotal attachment at 230, is free to swing as needed to different position with respect to the front face of the dock wall. The reference thus shows the claimed limitation.

Per claims 20-22, 24-26, the first panel is also able to function as claimed " adapted to be mountable to and pivotally moveable relative to the front face of the dock wall" due to its connection to the mounting bracket at 230.

Per claims 27-28, Brockman ('977) also shows a rear edge of the rear first panel is adapted for essentially pivotal movement relative to the front face of the dock wall per its connection to the mounting bracket at 230. The position of the rear edge of the panel is different as it pivots around the pivotal axis at 230.

Per claims 29-34, Brockman ('977) also shows a first panel means that is pivotably mountable to the front face of the dock wall.

With respect to claim 44, applicant is correct that Brockman ('977) does not show the first panel being flexibly mounted to the dock wall using an L-shaped spring. The inclusion of claim 44 in the 102 rejection under Brockman ('977) was a typo as claim 44 depends on claim 41, which is not rejection by Brockman ('977). The claim 44, however, is corrected set forth in the 103 rejection under Brockman ('613) in view of O'Neal. The 102 rejection of claim 44 under Brockman ('977) has been withdrawn.

3. With respect to Miller, the reference shows a first panel (28) that is adapted for essentially pivotable movement relative to a front face of the dock wall. The first panel is able to flex when force is applied thereof. As the first panel is able to flex, it is able to function to provide for essentially pivotable movement relative to a front face of the dock wall.

Furthermore, the claims are to a panel assembly only, not in combination with a dock wall.

Miller shows the claimed panel assembly, and able to function as claimed. the reference thus shows the claimed limitations.

4. With respect to claims 37-40 under Brockman ('977), examiner respectfully points out that the reference shows a second rear panel (240, 224', 222') being pivotally and flexibly mounting to the front face of the wall per its connection at 230', the first panel, and at 230. The positions at 20', 230 allows for pivotal movement while the first panel enables the second to be flexible relative to the front face of the wall.

5. Applicant's arguments to claims 12, 36, 41 are thus also moot per the reasons set forth above.

6. With respect to claim 47, the claim was improperly set forth as rejected under Brockman ('977) in view of O'Neal. It should have been correctly stated as rejected under Brockman ('613) in view of O'Neal as the claim depends on claim 44, which is rejected under Brockman ('613). This is to clarify the previous rejection and not a new rejection.

7. With respect to claims 37-41, 44, the claims are correctly rejected under Brockman ('613) in view of O'Neal, but misstated by applicant as under Brockman ('977) in view of O'Neal. Examiner understands this is typo and tries to respond to applicant's statement accordingly. As set forth in the rejection above, Brockman('613) shows the second rear panel being flexibly connected to the first panel and then attached to the front face of the dock wall(see figures 4-5). The reference thus shows claimed limitation. Applicant's argument is thus also moot.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:
10/615,296
Art Unit: 3633

Page 14

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Phi Dieu Tran A

PA

12/20/2007


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SUPERVISORY PATENT EXAMINER